STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LILYAN MARIE WESTRATE
and LOGAN BENJAMIN WESTRATE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LINDSAY DANIELS,

Respondent-Appellant,

and

BENJAMIN WESTRATE,

Respondent.

UNPUBLISHED
May 10, 2007

No. 272622
Oakland Circuit Court
Family Division
LC No. 04-690706-NA

In the Matter of LILYAN MARIE WESTRATE
and LOGAN BENJAMIN WESTRATE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LINDSAY DANIELS,

Respondent,

and

BENJAMIN WESTRATE,

Respondent-Appellant.

No. 272624
Oakland Circuit Court
Family Division
LC No. 04-690706-NA

Before: Smolenski, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In these consolidated appeals, respondent Lindsay Daniels appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (g), and (j), and respondent Benjamin Westrate appeals as of right from the same order terminating his parental rights to the minor children under subsections (g) and (j). We affirm.

A petition was filed on July 16, 2005, to take temporary custody of Lilyan (Lily) and Logan and to terminate respondents' parental rights. The petition alleged recent burns to Lily and a history of domestic violence, drug abuse, criminality, and Children's Protective Services (CPS) referrals. Previously, Lily was removed in 2003 and 2004, and respondents received services. Respondents had used drugs, including heroin and cocaine. Both had relapsed more than once, and both had criminal records. When Lily and Logan were removed again in July 2005, Lily had a burn in the shape of half of a steam iron on her calf. An amended petition was filed in August 2005, alleging that Logan had bruises on his diaper area. Medical testimony indicated that Logan's injuries were not likely accidental and probably due to abuse. Lily's injuries apparently occurred when respondent mother was alone with the children. She testified that she left the iron on the floor, unplugged, and Lily must have plugged it in while the mother was attending to Logan. However, the doctor testified that a child would have pulled away as soon as she felt pain. If she had backed up against the iron, the burn would probably appear as a line, not an imprint. A provisional diagnosis of child abuse was made.

On appeal, respondent Daniels argues that the trial court clearly erred in terminating her parental rights, because the record did not show clear and convincing evidence to satisfy the statutory grounds. We disagree. As the referee found, at best respondent Daniels left a very small child alone with a dangerous object. Lily was only two at the time, and the burn resulted from at least gross negligence. Logan's injuries were also unexplained and not likely accidental. Both respondents had used drugs and were observed caring for the children while under the influence. While the case was under court supervision, respondents relapsed on heroin in August 2005 for two or three months. While respondent mother did later enter a treatment center and provided many months of clean screens, the trial court could have reasonably believed that her history of relapsing after treatment posed a significant threat to the children's welfare. We find no clear error in the trial court's determination that subsections (b)(ii), (g), and (j) were satisfied by clear and convincing evidence with respect to respondent mother. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

Respondent mother also claims that termination was clearly contrary to the children's best interests. We disagree. Respondent mother did seek and accept help with her drug problem, obtain employment, and turn in negative drug screens. She also visited the children regularly after her relapse, and she was loving and appropriate with them. However, she had a long-standing, serious drug problem with many relapses. She also had instability in housing and relationships. Respondents had used drugs together and still had contact. The psychologist who evaluated respondent mother in April 2006 questioned her ability to make permanent changes and act in the children's welfare. Because of respondents' problems, Lily and Logan were out of

respondents' care for most of their lives. Despite numerous services and appearing to benefit in 2004, respondent mother relapsed and both children were injured in respondents' care. The children need a stable, safe, permanent home, which respondent mother cannot provide. The trial court did not clearly err in its best interests ruling. MCL 712A.19b(5); *Trejo, supra* at 353.

Respondent father claims that he was deprived of the right to effective assistance of counsel when one attorney represented both respondents through the jurisdictional and bench trial phase. An attorney owes undivided allegiance to a client and may not usually represent parties on both sides of a dispute. *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 197; 650 NW2d 364 (2002); MRPC 1.7. Where, as here, no motion for new trial or evidentiary hearing is made, our review is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). In this case, respondent father specifically consented to the dual representation at the pretrial. New counsel was appointed for both parents before the best interests hearing, when the possibility of a conflict was raised. We have carefully examined the record and find no error requiring reversal. At the time of the dual representation, both respondents shared the same goal and their counsel did not have to slight representation of one respondent to adequately represent the other. She made opening and closing arguments, cross-examined petitioner's witnesses, brought out shortcomings in petitioner's case, and noted voluntary negative drug tests and other positive facts for both respondents. She called witnesses that testified to a bond between both respondents and the children and attested that neither respondent appeared under the influence of drugs while caring for the children. The attorney did not make a serious error that prejudiced respondent father's case, and her representations did not fall below an objective standard of reasonableness. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002).

Affirmed.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra